

AMENDED IN SENATE MAY 24, 2004

AMENDED IN SENATE APRIL 19, 2004

SENATE BILL

No. 1841

Introduced by Senator Bowen

February 20, 2004

An act to add Section 436 to the Labor Code, relating to electronic monitoring of employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1841, as amended, Bowen. Electronic monitoring of employees.

Existing law prohibits an employer from recording an employee in certain areas of the workplace without a court order. Existing law makes a violation of the prohibition on recording employees a misdemeanor.

This bill would prohibit employers from engaging in electronic monitoring, as defined, of employees without first providing notice to the employees, except in certain specified circumstances.

Because violations of these provisions would constitute a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 436 is added to the Labor Code, to read:

436. (a) For purposes of this section:

“Electronic monitoring” means the collection of individually identifiable information concerning employee activities or communications through the use of an electronic device including, but not limited to, a computer, telephone, wire, radio, camera, or electromagnetic, photo-electronic, or photo-optical system.

(b) (1) Except as provided under subdivision (d), an employer that intentionally engages in electronic monitoring of an employee without first having provided the employee with notice pursuant to subdivision (c) is liable to the employee for relief as set forth in subdivision (e).

(2) Before implementing a material change in an electronic monitoring practice, an employer shall provide notice pursuant to subdivision (c) to all employees who will be subject to electronic monitoring as a result of the change in practice.

(c) (1) Notice meeting the requirements of this subdivision constitutes clear and conspicuous notice to each employee if given to each employee either electronically or in writing, in a manner reasonably calculated to provide actual notice, if the notice describes:

(A) The form of communication or type of computer usage, or type of electronic device that will be monitored.

~~(B) The means by which the monitoring will be accomplished.~~

~~(C)~~

~~(B)~~ The kinds of information that will be obtained through the monitoring, including whether communications or computer usage not related to the employer’s business are likely to be monitored.

~~(D) The frequency of the monitoring.~~

~~(E) The manner in which information obtained by the monitoring will be stored, used, or disclosed.~~

(2) Notice by placing signs in the workplace does not constitute clear and conspicuous notice pursuant to this section.

(d) Notwithstanding this section, an employer may conduct electronic monitoring without notice to an employee if the employer has reasonable grounds to believe that:

(1) A particular employee is engaged in unlawful conduct.

1 (2) Electronic monitoring will produce evidence of the
2 employee's unlawful conduct and will be conducted in accordance
3 with other applicable state and federal laws.

4 (e) The rights set forth in this section may not be waived by
5 contract or otherwise, unless the waiver is part of a written
6 settlement to a pending action or complaint.

7 (f) Nothing in this section may be construed to preempt,
8 modify, or amend any county or local law, ordinance, or regulation
9 providing greater protection to employees.

10 (g) The provisions of this section may not be construed as
11 enhancing or diminishing an employee's reasonable expectation
12 of privacy under state or federal law.

13 SEC. 2. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

